

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS**

RAMON RICHARDS,

Plaintiff,

v.

GENERAL MILLS SALES, INC.,
AND H-E-B, LP D/B/A H-E-B
TEXAS 395 CORPORATE STORE,

Defendants.

Civil Action No. 5:24-cv-317

**DECLARATION OF BERTINA B. YORK IN SUPPORT OF
NOTICE OF REMOVAL OF ACTION**

I, Bertina B. York, declare:

1. I am an attorney duly licensed to practice in the State of Texas and an attorney at the law firm of Norton Rose Fulbright US LLP. I am the attorney of record for Defendant General Mills Sales, Inc. ("General Mills"). I have personal knowledge of the facts contained in this Declaration, and if called upon to testify I would and could do so as set forth herein.

2. On February 22, 2024, Plaintiff Ramon Richards ("Plaintiff") filed a civil action in the 224th Judicial District Court for the County of Bexar, titled *Ramon Richards v. General Mills, Inc., et al.*, Cause No. 2024CI03830. Plaintiff

asserts negligence, strict liability, product liability, *res ipsa loquitor*, and breach of warranty claims against General Mills, which stem from an alleged incident and subsequent injuries involving General Mills' Trix cereal on or around August 24, 2022. A true and correct copy of Plaintiff's First Amended Petition is attached hereto as **Exhibit A**.

3. Plaintiff's Petition also names Defendant H-E-B, LP D/B/A H-E-B, Texas Corporate 395 Store ("H-E-B").

4. On February 28, 2024, Plaintiff personally served General Mills through its agent for service of process. A true and correct copy of the Citations served on General Mills and H-E-B are attached hereto as **Exhibit B**.

5. General Mills, at the time this action was commenced, was and still is a corporation organized under the laws of the State of Delaware, with its principal place of business in Minneapolis, Minnesota, and was not and is not organized under the laws of the State of Texas, wherein this action was brought.

6. H-E-B at the time this action was commenced, was and still is a Texas Limited Partnership with its principal place of business in San Antonio, Texas. Undersigned counsel avers that Plaintiff improperly joined the non-diverse Defendant H-E-B, and their citizenship should not be considered in determining the propriety of removal under 28 U.S.C. § 1332. Nonetheless, H-E-B consents to removal of this action to this Court.

7. Plaintiff's Petition alleges monetary damages "over Two Hundred and Fifty Thousand Dollars (\$250,000.00)" arising from his claims. (Am. Pet. at ¶ 1.) According to Plaintiff's Petition, Plaintiff seeks pain and suffering, past and future medical expenses, future lost earnings and/or lost earning capacity, and costs of suit. (*Id.* at ¶ 32.) General Mills disputes that it is liable for any damages whatsoever to Plaintiff.

8. A true and correct copy of all other process, pleadings, and orders served in this action at the time of this removal and known to General Mills are attached hereto as **Exhibit C**. I am informed and believe that no other process, pleadings, or orders have been filed, served, or received by General Mills in this case. Pursuant to 28 U.S.C. § 1446(a) and LRCiv 3.6(b), to the best of undersigned counsel's knowledge, **Exhibit C** constitutes true and correct copies of all the process, pleadings, and orders served in this action at the time of this removal.

11. A true and correct copy of the Civil Cover Sheet is attached hereto as **Exhibit D**.

12. A true and correct copy of the most recent state court docket is attached hereto as **Exhibit E**.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 28th day of March, 2024, pursuant to the laws of the United States of America and the State of Texas, at Bexar County, San Antonio, Texas.

Dated: March 28, 2024



Bertina B. York (TX #03354500)
NORTON ROSE FULBRIGHT US LLP
111 W. Houston Street, Suite 1800
San Antonio, TX 78205
T: (210) 270-9327
F: (210) 270-7205
bertina.york@nortonrosefulbright.com

EXHIBIT

A

CAUSE NO. 2024CI03830

RAMON RICHARDS,	§	IN THE DISTRICT COURT
PLAINTIFF,	§	
	§	
VS.	§	
	§	224TH JUDICIAL DISTRICT
GENERAL MILLS SALES, INC., AND	§	
H-E-B, LP D/B/A H-E-B TEXAS	§	
CORPORATE 395 STORE	§	
DEFENDANTS.	§	BEXAR COUNTY, TEXAS

**PLAINTIFF’S FIRST AMENDED ORIGINAL PETITION
WITH REQUESTS FOR INITIAL DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES RAMON RICHARDS, hereinafter referred to by name or as Plaintiff, and complains of **GENERAL MILLS SALES, INC.** (“Defendant GENERAL MILLS”) **and H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 395 STORE** (“Defendant HEB”) hereinafter referred to by names or as Defendants in the aggregate, and for cause of action would respectfully show unto the Court as follows:

CLAIMS FOR RELIEF AND DISCOVERY CONTROL PLAN

1. Plaintiff asserts that the amount of any monetary damages awarded to Plaintiff should be decided by a jury of Plaintiff’s peers. However, Pursuant to RULE 47 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff seeks monetary relief over Two Hundred and Fifty Thousand Dollars (\$250,000.00) and a demand for judgment for all the other relief to which Plaintiff **RAMON RICHARDS** deems himself justly entitled at the time of filing this suit, which, with the passage of time, may change. Plaintiffs intend that discovery be conducted under LEVEL 3 of RULE 190 of the TEXAS RULES OF CIVIL PROCEDURE.

PARTIES

2. Plaintiff, **RAMON RICHARDS**, is an individual who resides in San Antonio, Bexar County, Texas. Pursuant to Section 30.14 of the Texas Civil Practice & Remedies Code, Plaintiff provides the following information: the last three (3) numbers of Plaintiff's social security number are: 474.

3. Defendant **GENERAL MILLS SALES INC.** is a Foreign For-Profit Corporation authorized to do business in the State of Texas and may be served with process through its registered agent, NATIONAL REGISTERED AGENTS, INC., 1999 Bryan St., Ste, 900, Dallas, Texas 75201.

Citation is hereby requested.

4. Defendant **H-E-B, LP D/B/A H-E-B, TEXAS CORPORATE 395 STORE** is a domestic limited partnership authorized to do business in the State of Texas and may be served with process through its registered agent, Abel Martinez, 646 South Flores St., San Antonio, Texas 78204.

Citation is hereby requested.

JURISDICTION & VENUE

5. This Court has jurisdiction over the parties because the amount in controversy is within the jurisdictional limits of this Court. Additionally, this Court has jurisdiction over the parties because Defendant is a Texas resident and/or does business in the State of Texas.

6. Venue in Bexar County is proper in this Cause under Section 15.002(a)(1) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

MISNOMER, ALTER-EGO AND ASSUMED NAMES

7. In the event any parties are misnamed or not included herein, it is Plaintiff's contention that such was a "misnomer" and/or such parties are/were "alter egos" of parties named herein. Plaintiff

relies upon Vernon's Texas Revised Civil Statutes Annotated, Art 6133, et seq., and Rule 28 of the TEXAS RULES OF CIVIL PROCEDURE in order to properly identify the corporate Defendants herein.

FACTS

8. Plaintiff was injured by consuming this product in the manner intended and foreseen by the Defendants. The product in question, breakfast cereal, is sold in a sealed plastic bag. The product is designed to be used for human consumption in the manner suggested by the manufacturer, to wit: Ready to Eat. Start by pouring your cereal into a bowl, then add milk and eat your cereal.

9. On August 24, 2022, Plaintiff Ramon Richards was a customer shopping at Defendant HEB's store located at 12777 IH 10 WEST, San Antonio, Texas 78230 where he has purchased a 35 oz. bag of Trix Breakfast Cereal. Plaintiff was injured by using the product in the manner described above and suggested on the packaging. That is, Plaintiff opened the package, poured the breakfast into a bowl of cereal, and proceeded to eat the cereal. As Plaintiff was eating the cereal, he bit into a hard object. Plaintiff felt instant pain in his teeth and jaw and heard a cracking sound in his mouth. Plaintiff spit out from his mouth an object that was discovered to be a metal nail. Pieces of Plaintiff's teeth also came out of his mouth.

10. At no time did Plaintiff Ramon Richards alter the package or contents of the Trix bag of breakfast cereal. The product was under the control and prepared by Defendants prior to Plaintiff consuming the product.

PLAINTIFF'S CLAIMS OF NEGLIGENCE AGAINST DEFENDANTS

11. Plaintiff asserts that the product in question, a 35 oz. bag of Trix Breakfast Cereal, was defective and unsafe for its intended purpose at the time it left the control of Defendant GENERAL

MILLS and at the time it was sold by the retailer Defendant H-E-B. Plaintiff further asserts that the product was defective in that it was improperly processed, manufactured, and sold with a dangerous foreign object, a metal nail, in the packaged cereal.

12. Thus, as a proximate result of Defendants' negligent conduct, Plaintiff sustained injuries resulting in injuries and damages to Plaintiff as hereinafter set out. Plaintiff asserts, therefore, that the incident was proximately caused by the negligence of Defendant H-E-B and Defendant GENERAL MILLS, and that said negligence was the proximate cause of the Plaintiff's bodily injuries and damages.

13. Defendants breached the duty of care they owed to Plaintiff as a consumer and were both negligent and grossly negligent in their failure to exercise ordinary care in the safety of Plaintiff. Plaintiff seeks all applicable damages available under Texas law.

14. Due to the negligence of Defendant GENERAL MILLS and Defendant HEB" in packaging, distributing, and selling a product that was unfit for human consumption, Plaintiff Ramon Richards sustained injuries to his body, incurred medical expenses, and is likely to incur additional medical expenses in the future.

STRICT LIABILITY CLAIMS AGAINST DEFENDANTS

15. The Defendants, and each of them, who regularly engage in the business of manufacturing and selling packaged food products, sold a package of food that was adulterated, in that it contained a foreign body that made the food unreasonably dangerous for human consumption. The product that the Defendants manufactures, packaged, sold contained a metal nail at the time it left the Defendants' possession and control. Food that contains metal nails embedded within it is unreasonably dangerous for its ordinary and expected use, i.e., human consumption. Such a product is thus in an unreasonably dangerous condition not contemplated by an ordinary consumer,

making it defective *per se*. The packaged breakfast cereal was used by the Plaintiff in the manner expected and intended when Plaintiff consumed it. The Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the product sold by the Defendants. The Defendants are strictly liable to the Plaintiff for all damages proximately caused by their defective product.

**PRODUCT LIABILITY CLAIMS AGAINST DEFENDANT
H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE**

16. On August 24, 2022, Plaintiff bought 35 oz. bag of Trix Breakfast Cereal from Defendant H-E-B.

17. At all times material to this cause of action, Defendant H-E-B was the owner of and/or controlled the subject premises, located at 12777 IH 10 WEST, San Antonio, Texas 78230.

18. At the time of this occurrence, Defendant H-E-B was engaged in the retail business of selling food, including the bag of Trix Breakfast Cereal described above, to the general public.

19. At the time Plaintiff opened the bag of Trix Breakfast Cereal and consumed its contents, the bag was in the same packaging as originally manufactured and as it was at the time it was sold to him by Defendant H-E-B.

**PRODUCT LIABILITY CLAIMS BY MANUFACTURER
DEFENDANT GENERAL MILLS SALES INC.**

20. At the time of this occurrence, Defendant GENERAL MILLS SALES, INC., was engaged in the business of manufacturing and packaging cereals products, including bags of Trix Breakfast Cereal, for sale to and for use by members of the general public. Defendant placed the Trix Breakfast Cereal Bag into the stream of commerce by H-E-B.

21. Defendant GENERAL MILLS was negligent in the processing, manufacturing, marketing and distribution of the bag of Trix Breakfast Cereal in that its product was defective and was

packaged with a dangerous foreign object (a metal nail). Further, Defendant GENERAL MILLS failed to warn the public and Plaintiff of the dangerous foreign object contained within its product.

22. Plaintiff asserts that each and all of the foregoing acts and or omissions were negligent and constituted negligence and were each and all the proximate cause of the incident which forms the basis of this suit and was a proximate cause of Plaintiff's injuries and damages.

BREACH OF EXPRESS WARRANTY

23. Plaintiff further asserts that Defendant GENERAL MILLS and Defendant H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE each expressly warranted that their food product, a 35 oz. bag of Trix Breakfast Cereal, would be fit for human consumption or otherwise would not have a dangerous foreign object (a metal nail) in it. Defendants, and each of them, breached said warranty by selling Plaintiff a 35 oz. bag of Trix Breakfast Cereal with a metal nail in it.

24. As a proximate result of said breach of express warranties by the Defendants, and each of them, Plaintiff was seriously injured, experienced pain and suffering, mental anguish and incurred medical bills.

BREACH OF EXPRESS WARRANTY

25. Plaintiff asserts that Defendant GENERAL MILLS and Defendant H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE each impliedly warranted that their food product, a 35 oz. bag of Trix Breakfast Cereal, would be fit for human consumption or otherwise would not have a dangerous foreign object (a metal nail) in it. Defendants, and each of them, breached said warranty by selling Plaintiff a 35 oz. bag of Trix Breakfast Cereal with a metal nail in it.

26. As a proximate result of said breach of implied warranties by the Defendants, and each of them, Plaintiff was seriously injured, experienced pain and suffering, mental anguish and incurred medical bills.

RES IPSA LOQUITUR

27. Plaintiff cannot more specifically allege the acts of negligent manufacture or design on the part of Defendant GENERAL MILLS, because facts in the regard are peculiarly within the knowledge of the Defendant. In the alternative, in the event Plaintiff is unable to prove specific acts of negligent design or manufacture, Plaintiff relies on the doctrine of *res ipsa loquitur*.

28. In this connection, negligent design or manufacture, Plaintiff will show that the character of the occurrence giving rise to this litigation is such that it would not have in the absence of negligence, and the design and manufacture of the bag of Trix Breakfast Cereal was within the exclusive control of the Defendant GENERAL MILLS at the time of the negligence probably occurred.

29. Plaintiff had no means of ascertaining the method or manner in which the product was designed and manufactured, and it came into Plaintiff's possession in the same condition it was in when it left in the control of the Defendant GENERAL MILLS. Thus, Defendant GENERAL MILLS was negligent in the design and/or manufacture of the Trix Breakfast Cereal bag, and such negligence was a proximate cause of injuries and damages sustained by Plaintiff.

DAMAGES

30. As a direct result of the conduct of Defendants and their agents, servants, and employees, Plaintiff suffered severe injuries to his tooth. These injuries are permanent in nature. The injuries have had a serious effect on Plaintiff's health and well-being. These specific injuries and their ill effects have, in turn, caused Plaintiff's physical and mental condition to deteriorate generally and the specific injuries and ill effects have caused and will, in all reasonable probability, cause Plaintiff to suffer consequences and ill effects of the deterioration of his body for long into the future if not for the balance of his natural life. As a result of the nature and consequences of his injuries, Plaintiff has

suffered great physical and mental pain, suffering and anguish and in all reasonable probability, will continue to suffer in this manner for a long time into the future, if not for the balance of his natural life. By reason of all the above Plaintiff has suffered losses and damages in a sum within the jurisdictional limits of this Court and for which this lawsuit is brought.

31. As a further result of all of the above, Plaintiff has incurred expenses for his medical care and attention. These expenses were incurred for the necessary care and treatment of injuries resulting from the incident complained of. The charges are reasonable and were the usual and customary charges made for the services. As a further result of the injuries sustained by Plaintiff, there is reasonable probability that he will require further medical care and attention and will incur future reasonable and necessary expenses for his medical care and attention.

32. As a proximate cause of the Defendants' negligent conduct and the resulting collision, Plaintiff seeks to recover damages, which specifically include, but are not limited to, the following:

1. Medical expenses in the past;
2. Medical expenses that in all reasonable probability will be incurred in the future, including the cost of medical monitoring and prevention in the future;
3. Physical pain and suffering in the past;
4. Physical pain and suffering that will in all reasonable probability be incurred in the future;
5. Physical impairment, including loss of enjoyment of life, in the past;
6. Physical impairment, including loss of enjoyment of life, which in all reasonable probability, will be suffered in the future;
7. Physical Disfigurement in the past;
8. Physical Disfigurement that in all reasonable probability will be incurred in the future;
9. Mental anguish in the past;
10. Mental anguish that in all reasonable probability will be incurred in the future;
11. Lost wages in the past; and
12. Loss of future wage-earning capacity;

33. By reason of all of the above, Plaintiff **RAMON RICHARDS** has suffered losses and damages in a sum within the jurisdictional limits of this Court for which he now sues.

INTEREST

34. Plaintiff further requests both pre-judgment and post-judgment interest on all damages as allowed by law.

DEMAND FOR JURY TRIAL

35. Plaintiff demands a trial by jury. Plaintiff acknowledges payment on this date of the required jury fee.

REQUEST FOR DISCLOSURE

36. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, all parties named herein as Defendants are to disclose, within thirty (30) days following the first Answer or general appearance of Defendants, the information and material described in the TEXAS RULES OF CIVIL PROCEDURE 194.2(a)-(l).

NOTICE OF SELF AUTHENTICATION

37. Pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff hereby gives notice to all parties that they intend to use all documents, materials and other discovery instruments produced in this case at trial. Such discovery instruments include, but are not limited to, all documents and materials which Defendant produces in response to Plaintiff's written discovery requests.

DESIGNATED E-SERVICE EMAIL ADDRESS

38. The following is the undersigned attorney's designated E-Service email address for all e-served documents and notices, filed and unfiled, pursuant to Tex. R. Civ. P. 21(f)(2) & 21a: mark.acuna@martinez-law.com; claudia.acuna@martinez-law.com; frances.gonzales@martinez-law.com

[law.com](#). This is the undersigned's only E-Service email address, and service through any other email address will be considered invalid.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, **RAMON RICHARDS**, respectfully prays that Defendants **H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE AND GENERAL MILLS SALES, INC.**, be cited to appear and answer herein, and that Plaintiff be awarded a judgment against Defendants for the following:

- a. Actual and compensatory damages;
- b. Pre and post judgment interest at the maximum rate allowable by law;
- c. Any and all applicable costs of court; and
- d. Any and all such other and further relief to which Plaintiff may be entitled to, at law or in equity.

RESPECTFULLY SUBMITTED,

By: /s/ Mark Anthony Acuna
Mark Anthony Acuna
Texas Bar No. 24064044
mark.acuna@martinez-law.com
Desi I. Martinez
Texas Bar No. 24053342
desi.martinez@martinez-law.com

MARTINEZ & ASSOCIATES, PLLC
2828 Goliad Road, Suite 125
San Antonio, Texas 78223
Tel. (210) 359-8250
Fax (210) 359-8255

Attorneys for Plaintiff

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Claudia Acuna on behalf of Mark Acuna

Bar No. 24064044

claudia.acuna@martinez-law.com

Envelope ID: 84803022

Filing Code Description: FIRST AMENDED PETITION

Filing Description: WITH REQUESTS FOR INITIAL DISCLOSURES

Status as of 2/26/2024 8:08 AM CST

Associated Case Party: Ramon Richards

Name	BarNumber	Email	TimestampSubmitted	Status
Mark AnthonyAcuna		mark.acuna@martinez-law.com	2/22/2024 2:55:00 PM	SENT
Frances Gonzales		frances.gonzales@martinez-law.com	2/22/2024 2:55:00 PM	SENT
Claudia Acuna		claudia.acuna@martinez-law.com	2/22/2024 2:55:00 PM	SENT

EXHIBIT B

Gloria A. Martinez
Bexar County District Clerk
Accepted By: Garland Carter
Bexar County - 224th District Court

PRIVATE PROCESS

Case Number: 2024CI03830

Ramon Richards VS General Mills Sales, Inc. ET AL
(Note: Attached Document May Contain Additional
Litigants)

IN THE 224TH DISTRICT COURT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: **General Mills Sales, Inc.**
BY SERVING ITS REGISTERED AGENT, NATIONAL REGISTERED AGENTS

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00am on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org" Said **First Amended Original Petition With Requests For Initial Disclosures** was filed on this the **22nd day of February, 2024**.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT on this the **26th day of February, 2024**.

MARK ANTHONY ACUNA
ATTORNEY FOR PLAINTIFF
2828 Goliad RD STE 125
San Antonio TX 78223-3967



Gloria A. Martinez
Bexar County District Clerk
101 W. Nueva, Suite 217

San Antonio, Texas 78205
By: /s/ Rosa Aguilera-Rodriguez
Rosa Aguilera-Rodriguez, Deputy

RAMON RICHARDS VS GENERAL MILLS SALES, INC. ET AL

Case Number: 2024CI03830
224th District Court

Officer's Return

I received this CITATION on the 26 day of February, 2024 at 1212 o'clock P M. and () executed it by delivering a copy of the CITATION with attached **FIRST AMENDED ORIGINAL PETITION WITH REQUESTS FOR INITIAL DISCLOSURES** the date of delivery endorsed on it to the defendant National Registered Agents For General Mills Sales Inc in person on the 28 day of February, 2024 at 1116 o'clock A M.
at 1999 Bryan St. Ste. 900 City Dallas State TX Zip 75201

or () not executed because _____

Fees: _____ Badge/PPS #: _____ Date certification expires: _____

_____ County, Texas

BY: _____

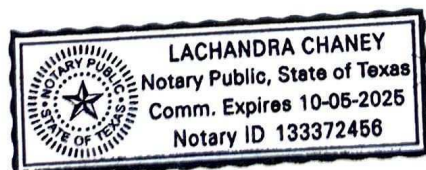
OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS

Narcus Diaz

[Signature]
NOTARY PUBLIC, STATE OF TEXAS

OR: My name is Narcus Diaz, my date of birth is 10/18/67, and my address is 1172 W. Pioneer Pkwy Tarrant County, Arlington, TX 76013

I declare under penalty of perjury that the foregoing is true and correct. Executed in Tarrant County, State of Texas, on the 28 day of February, A.D., 2024



Narcus Diaz
PSC# 13928
Expires 8/31/24

Declarant

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Frances Gonzales on behalf of Mark Acuna
 Bar No. 24064044
 frances.gonzales@martinez-law.com
 Envelope ID: 85096672
 Filing Code Description: Return of Service Successful
 Filing Description: H-E-B, LP
 Status as of 3/4/2024 12:07 PM CST

Associated Case Party: Ramon Richards

Name	BarNumber	Email	TimestampSubmitted	Status
Frances Gonzales		frances.gonzales@martinez-law.com	3/1/2024 11:41:28 AM	SENT
Claudia Acuna		claudia.acuna@martinez-law.com	3/1/2024 11:41:28 AM	SENT
Mark AnthonyAcuna		mark.acuna@martinez-law.com	3/1/2024 11:41:28 AM	SENT

Gloria A. Martinez
Bexar County District Clerk
Accepted By: Garland Carter
Bexar County - 224th District Court

PRIVATE PROCESS

Case Number: 2024CI03830

Ramon Richards VS General Mills Sales, Inc. ET AL
(Note: Attached Document May Contain Additional
Litigants)

IN THE 224TH DISTRICT COURT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: **H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 395 STORE**
BY SERVING ITS REGISTERED AGENT, ABEL MARTINEZ

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00am on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org" Said **First Amended Original Petition With Requests For Initial Disclosures** was filed on this the **22nd day of February, 2024**.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT on this the **26th day of February, 2024**.

MARK ANTHONY ACUNA
ATTORNEY FOR PLAINTIFF
2828 Goliad RD STE 125
San Antonio TX 78223-3967



Gloria A. Martinez
Bexar County District Clerk
101 W. Nueva, Suite 217

San Antonio, Texas 78205
By: /s/ Rosa Aguilera-Rodriguez
Rosa Aguilera-Rodriguez, Deputy

RAMON RICHARDS VS GENERAL MILLS SALES, INC. ET AL

Case Number: 2024CI03830
224th District Court

Officer's Return

I received this CITATION on the 26 day of February, 2024 at 1:00 o'clock P.M. and (X) executed it by delivering a copy of the CITATION with attached **FIRST AMENDED ORIGINAL PETITION WITH REQUESTS FOR INITIAL DISCLOSURES** the date of delivery endorsed on it to the defendant H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 395 STORE through its representative Sarah Luna person on the 27 day of February, 2024 at 10:23 o'clock A.M.

at 646 S. Flores St City San Antonio State TX Zip 78204

or () not executed because _____

Fees: _____ Badge/PPS #: 110578 Date certification expires 04/30/2025

Travis County, Texas
BY: Christian Amador Gonzalez

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is Christian Amador Gonzalez, my date of birth is 01/30/1988, and my address is P.O. Box 12681 Austin TX 78711 Travis County.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Bexar County, State of Texas, on the 27 day of February, A.D., 2023.

Christian Amador Gonzalez
Declarant

Automated Certificate of eService

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Frances Gonzales on behalf of Mark Acuna
 Bar No. 24064044
 frances.gonzales@martinez-law.com
 Envelope ID: 85096672
 Filing Code Description: Return of Service Successful
 Filing Description: H-E-B, LP
 Status as of 3/4/2024 12:07 PM CST

Associated Case Party: Ramon Richards

Name	BarNumber	Email	TimestampSubmitted	Status
Mark AnthonyAcuna		mark.acuna@martinez-law.com	3/1/2024 11:41:28 AM	SENT
Frances Gonzales		frances.gonzales@martinez-law.com	3/1/2024 11:41:28 AM	SENT
Claudia Acuna		claudia.acuna@martinez-law.com	3/1/2024 11:41:28 AM	SENT

EXHIBIT C

CAUSE NO. _____

RAMON RICHARDS,	§	IN THE DISTRICT COURT
PLAINTIFF,	§	
	§	
VS.	§	
	§	
GENERAL MILLS SALES, INC., AND	§	_____ JUDICIAL DISTRICT
H-E-B, LP D/B/A H-E-B TEXAS	§	
CORPORATE 395 STORE	§	
DEFENDANTS.	§	BEXAR COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION
WITH REQUESTS FOR INITIAL DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES RAMON RICHARDS, hereinafter referred to by name or as Plaintiff, and complains of **GENERAL MILLS SALES, INC.** (“Defendant GENERAL MILLS”) and **H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 395 STORE** (“Defendant HEB”) hereinafter referred to by names or as Defendants in the aggregate, and for cause of action would respectfully show unto the Court as follows:

CLAIMS FOR RELIEF AND DISCOVERY CONTROL PLAN

1. Plaintiff asserts that the amount of any monetary damages awarded to Plaintiff should be decided by a jury of Plaintiff’s peers. However, Pursuant to RULE 47 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff seeks monetary relief over Two Hundred and Fifty Thousand Dollars (\$250,000.00) and a demand for judgment for all the other relief to which Plaintiff **RAMON RICHARDS** deems himself justly entitled at the time of filing this suit, which, with the passage of time, may change. Plaintiffs intend that discovery be conducted under LEVEL 3 of RULE 190 of the TEXAS RULES OF CIVIL PROCEDURE.

PARTIES

2. Plaintiff, **RAMON RICHARDS**, is an individual who resides in San Antonio, Bexar County, Texas. Pursuant to Section 30.14 of the Texas Civil Practice & Remedies Code, Plaintiff provides the following information: the last three (3) numbers of Plaintiff's social security number are: 474.

3. Defendant **GENERAL MILLS SALES INC.**, is a Foreign For-Profit Corporation authorized to do business in the State of Texas and may be served with process through its registered agent, NATIONAL REGISTERED AGENTS, INC., 1999 Bryan St., Ste, 900, Dallas, Texas 75201.

Citation is hereby requested.

4. Defendant **H-E-B, LP D/B/A H-E-B, TEXAS CORPORATE 395 STORE** is a domestic limited partnership authorized to do business in the State of Texas and may be served with process through its registered agent, Abel Martinez, 646 South Flores St., San Antonio, Texas 78204.

Citation is hereby requested.

JURISDICTION & VENUE

5. This Court has jurisdiction over the parties because the amount in controversy is within the jurisdictional limits of this Court. Additionally, this Court has jurisdiction over the parties because Defendant is a Texas resident and/or does business in the State of Texas.

6. Venue in Bexar County is proper in this Cause under Section 15.002(a)(1) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

MISNOMER, ALTER-EGO AND ASSUMED NAMES

7. In the event any parties are misnamed or not included herein, it is Plaintiff's contention that such was a "misnomer" and/or such parties are/were "alter egos" of parties named herein. Plaintiff

relies upon Vernon's Texas Revised Civil Statutes Annotated, Art 6133, et seq., and Rule 28 of the TEXAS RULES OF CIVIL PROCEDURE in order to properly identify the corporate Defendants herein.

FACTS

8. Plaintiff was injured by consuming this product in the manner intended and foreseen by the Defendants. The product in question, breakfast cereal, is sold in a sealed plastic bag. The product is designed to be used for human consumption in the manner suggested by the manufacturer, to wit: Ready to Eat. Start by pouring your cereal into a bowl, then add milk and eat your cereal.

9. On August 24, 2022, Plaintiff Ramon Richards was a customer shopping at Defendant HEB's store located at 12777 IH 10 WEST, San Antonio, Texas 78230 where he has purchased a 35 oz. bag of Trix Breakfast Cereal. Plaintiff was injured by using the product in the manner described above and suggested on the packaging. That is, Plaintiff opened the package, poured the breakfast into a bowl of cereal, and proceeded to eat the cereal. As Plaintiff was eating the cereal, he bit into a hard object. Plaintiff felt instant pain in his teeth and jaw and heard a cracking sound in his mouth. Plaintiff spit out from his mouth an object that was discovered to metal screw. Pieces of Plaintiff's teeth also came out of his mouth.

10. At no time did Plaintiff Ramon Richards alter the package or contents of the Trix bag of breakfast cereal. The product was under the control and prepared by Defendants prior to Plaintiff consuming the product.

PLAINTIFF'S CLAIMS OF NEGLIGENCE AGAINST DEFENDANTS

10. Plaintiff asserts that the product in question, a 35 oz. bag of Trix Breakfast Cereal, was defective and unsafe for its intended purpose at the time it left the control of Defendant GENERAL

MILLS and at the time it was sold by the retailer Defendant H-E-B. Plaintiff further asserts that the product was defective in that it was improperly processed, manufactured, and sold with a dangerous foreign object, a metal screw, in the packaged cereal.

11. Thus, as a proximate result of Defendants' negligent conduct, Plaintiff sustained injuries resulting in injuries and damages to Plaintiff as hereinafter set out. Plaintiff asserts, therefore, that the incident was proximately caused by the negligence of Defendant H-E-B and Defendant GENERAL MILLS, and that said negligence was the proximate cause of the Plaintiff's bodily injuries and damages.

12. Defendants breached the duty of care they owed to Plaintiff as a consumer and were both negligent and grossly negligent in their failure to exercise ordinary care in the safety of Plaintiff. Plaintiff seeks all applicable damages available under Texas law.

13. Due to the negligence of Defendant GENERAL MILLS and Defendant HEB" in packaging, distributing, and selling a product that was unfit for human consumption, Plaintiff Ramon Richards sustained injuries to his body, incurred medical expenses, and is likely to incur additional medical expenses in the future.

STRICT LIABILITY CLAIMS AGAINST DEFENDANTS

00. The Defendants, and each of them, who regularly engage in the business of manufacturing and selling packaged food products, sold a package of food that was adulterated, in that it contained a foreign body that made the food unreasonably dangerous for human consumption. The product that the Defendants manufactures, packaged, sold contained a metal nail at the time it left the Defendants' possession and control. Food that contains metal nails embedded within it is unreasonably dangerous for its ordinary and expected use, i.e., human consumption. Such a product is thus in an unreasonably dangerous condition not contemplated by an ordinary consumer,

making it defective *per se*. The packaged breakfast cereal was used by the Plaintiff in the manner expected and intended when Plaintiff consumed it. The Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the product sold by the Defendants. The Defendants are strictly liable to the Plaintiff for all damages proximately caused by their defective product.

**PRODUCT LIABILITY CLAIMS AGAINST DEFENDANT
H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE**

13. On August 24, 2022, Plaintiff bought 35 oz. bag of Trix Breakfast Cereal from Defendant H-E-B.

14. At all times material to this cause of action, Defendant H-E-B was the owner of and/or controlled the subject premises, located at 12777 IH 10 WEST, San Antonio, Texas 78230.

15. At the time of this occurrence, Defendant H-E-B was engaged in the retail business of selling food, including the bag of Trix Breakfast Cereal described above, to the general public.

16. At the time Plaintiff opened the bag of Trix Breakfast Cereal and consumed its contents, the bag was in the same packaging as originally manufactured and as it was at the time it was sold to him by Defendant H-E-B.

**PRODUCT LIABILITY CLAIMS BY MANUFACTURER
DEFENDANT GENERAL MILLS SALES INC.**

17. At the time of this occurrence, Defendant GENERAL MILLS SALES, INC., was engaged in the business of manufacturing and packaging cereals products, including bags of Trix Breakfast Cereal, for sale to and for use by members of the general public. Defendant placed the Trix Breakfast Cereal Bag into the stream of commerce by H-E-B.

18. Defendant GENERAL MILLS was negligent in the processing, manufacturing, marketing and distribution of the bag of Trix Breakfast Cereal in that its product was defective and was

packaged with a dangerous foreign object (a metal screw). Further, Defendant GENERAL MILLS failed to warn the public and Plaintiff of the dangerous foreign object contained within its product.

19. Plaintiff asserts that each and all of the foregoing acts and or omissions were negligent and constituted negligence and were each and all the proximate cause of the incident which forms the basis of this suit and was a proximate cause of Plaintiff's injuries and damages.

BREACH OF EXPRESS WARRANTY

20. Plaintiff further asserts that Defendant GENERAL MILLS and Defendant H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE each expressly warranted that their food product, a 35 oz. bag of Trix Breakfast Cereal, would be fit for human consumption or otherwise would not have a dangerous foreign object (a metal screw) in it. Defendants, and each of them, breached said warranty by selling Plaintiff a 35 oz. bag of Trix Breakfast Cereal with a metal screw in it.

21. As a proximate result of said breach of express warranties by the Defendants, and each of them, Plaintiff was seriously injured, experienced pain and suffering, mental anguish and incurred medical bills.

BREACH OF EXPRESS WARRANTY

22. Plaintiff asserts that Defendant GENERAL MILLS and Defendant H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE each impliedly warranted that their food product, a 35 oz. bag of Trix Breakfast Cereal, would be fit for human consumption or otherwise would not have a dangerous foreign object (a metal screw) in it. Defendants, and each of them, breached said warranty by selling Plaintiff a 35 oz. bag of Trix Breakfast Cereal with a metal screw in it.

23. As a proximate result of said breach of implied warranties by the Defendants, and each of them, Plaintiff was seriously injured, experienced pain and suffering, mental anguish and incurred

medical bills.

RES IPSA LOQUITUR

24. Plaintiff cannot more specifically allege the acts of negligent manufacture or design on the part of Defendant GENERAL MILLS, because facts in the regard are peculiarly within the knowledge of the Defendant. In the alternative, in the event Plaintiff is unable to prove specific acts of negligent design or manufacture, Plaintiff relies on the doctrine of *res ipsa loquitur*.

25. In this connection, negligent design or manufacture, Plaintiff will show that the character of the occurrence giving rise to this litigation is such that it would not have in the absence of negligence, and the design and manufacture of the bag of Trix Breakfast Cereal was within the exclusive control of the Defendant GENERAL MILLS at the time of the negligence probably occurred.

26. Plaintiff had no means of ascertaining the method or manner in which the product was designed and manufactured, and it came into Plaintiff's possession in the same condition it was in when it left in the control of the Defendant GENERAL MILLS. Thus, Defendant GENERAL MILLS was negligent in the design and/or manufacture of the Trix Breakfast Cereal bag, and such negligence was a proximate cause of injuries and damages sustained by Plaintiff.

DAMAGES

27. As a direct result of the conduct of Defendants and their agents, servants, and employees, Plaintiff suffered severe injuries to his tooth. These injuries are permanent in nature. The injuries have had a serious effect on Plaintiff's health and well-being. These specific injuries and their ill effects have, in turn, caused Plaintiff's physical and mental condition to deteriorate generally and the specific injuries and ill effects have caused and will, in all reasonable probability, cause Plaintiff to suffer consequences and ill effects of the deterioration of his body for long into the future if not for

the balance of his natural life. As a result of the nature and consequences of his injuries, Plaintiff has suffered great physical and mental pain, suffering and anguish and in all reasonable probability, will continue to suffer in this manner for a long time into the future, if not for the balance of his natural life. By reason of all the above Plaintiff has suffered losses and damages in a sum within the jurisdictional limits of this Court and for which this lawsuit is brought.

28. As a further result of all of the above, Plaintiff has incurred expenses for his medical care and attention. These expenses were incurred for the necessary care and treatment of injuries resulting from the incident complained of. The charges are reasonable and were the usual and customary charges made for the services. As a further result of the injuries sustained by Plaintiff, there is reasonable probability that he will require further medical care and attention and will incur future reasonable and necessary expenses for his medical care and attention.

29. As a proximate cause of the Defendants' negligent conduct and the resulting collision, Plaintiff seeks to recover damages, which specifically include, but are not limited to, the following:

1. Medical expenses in the past;
2. Medical expenses that in all reasonable probability will be incurred in the future, including the cost of medical monitoring and prevention in the future;
3. Physical pain and suffering in the past;
4. Physical pain and suffering that will in all reasonable probability be incurred in the future;
5. Physical impairment, including loss of enjoyment of life, in the past;
6. Physical impairment, including loss of enjoyment of life, which in all reasonable probability, will be suffered in the future;
7. Physical Disfigurement in the past;
8. Physical Disfigurement that in all reasonable probability will be incurred in the future;
9. Mental anguish in the past;
10. Mental anguish that in all reasonable probability will be incurred in the future;
11. Lost wages in the past; and
12. Loss of future wage-earning capacity;

30. By reason of all of the above, Plaintiff **RAMON RICHARDS** has suffered losses and damages in a sum within the jurisdictional limits of this Court for which he now sues.

INTEREST

31. Plaintiff further requests both pre-judgment and post-judgment interest on all damages as allowed by law.

DEMAND FOR JURY TRIAL

32. Plaintiff demands a trial by jury. Plaintiff acknowledges payment on this date of the required jury fee.

REQUEST FOR DISCLOSURE

33. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, all parties named herein as Defendants are to disclose, within thirty (30) days following the first Answer or general appearance of Defendants, the information and material described in the TEXAS RULES OF CIVIL PROCEDURE 194.2(a)-(l).

NOTICE OF SELF AUTHENTICATION

34. Pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff hereby gives notice to all parties that they intend to use all documents, materials and other discovery instruments produced in this case at trial. Such discovery instruments include, but are not limited to, all documents and materials which Defendant produces in response to Plaintiff's written discovery requests.

DESIGNATED E-SERVICE EMAIL ADDRESS

35. The following is the undersigned attorney's designated E-Service email address for all e-served documents and notices, filed and unfiled, pursuant to Tex. R. Civ. P. 21(f)(2) & 21a: mark.acuna@martinez-law.com; claudia.acuna@martinez-law.com; frances.gonzales@martinez-law.com

[law.com](#). This is the undersigned's only E-Service email address, and service through any other email address will be considered invalid.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, **RAMON RICHARDS**, respectfully prays that Defendants **H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE AND GENERAL MILLS SALES, INC.**, be cited to appear and answer herein, and that Plaintiff be awarded a judgment against Defendants for the following:

- a. Actual and compensatory damages;
- b. Pre and post judgment interest at the maximum rate allowable by law;
- c. Any and all applicable costs of court; and
- d. Any and all such other and further relief to which Plaintiff may be entitled to, at law or in equity.

RESPECTFULLY SUBMITTED,

By: /s/ Mark Anthony Acuna
Mark Anthony Acuna
Texas Bar No. 24064044
mark.acuna@martinez-law.com
Desi I. Martinez
Texas Bar No. 24053342
desi.martinez@martinez-law.com

MARTINEZ & ASSOCIATES, PLLC
2828 Goliad Road, Suite 125
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Attorneys for Plaintiff

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Claudia Acuna on behalf of Mark Acuna
Bar No. 24064044
claudia.acuna@martinez-law.com
Envelope ID: 84703209
Filing Code Description: Petition
Filing Description:
Status as of 2/21/2024 8:13 AM CST

Associated Case Party: Ramon Richards

Name	BarNumber	Email	TimestampSubmitted	Status
Mark AnthonyAcuna		mark.acuna@martinez-law.com	2/20/2024 3:43:49 PM	SENT
Frances Gonzales		frances.gonzales@martinez-law.com	2/20/2024 3:43:49 PM	SENT
Claudia Acuna		claudia.acuna@martinez-law.com	2/20/2024 3:43:49 PM	SENT

CAUSE NO. 2024CI03830

RAMON RICHARDS,	§	IN THE DISTRICT COURT
PLAINTIFF,	§	
	§	
VS.	§	
	§	224TH JUDICIAL DISTRICT
GENERAL MILLS SALES, INC., AND	§	
H-E-B, LP D/B/A H-E-B TEXAS	§	
CORPORATE 395 STORE	§	
DEFENDANTS.	§	BEXAR COUNTY, TEXAS

**PLAINTIFF’S FIRST AMENDED ORIGINAL PETITION
WITH REQUESTS FOR INITIAL DISCLOSURES**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES RAMON RICHARDS, hereinafter referred to by name or as Plaintiff, and complains of **GENERAL MILLS SALES, INC.** (“Defendant GENERAL MILLS”) and **H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 395 STORE** (“Defendant HEB”) hereinafter referred to by names or as Defendants in the aggregate, and for cause of action would respectfully show unto the Court as follows:

CLAIMS FOR RELIEF AND DISCOVERY CONTROL PLAN

1. Plaintiff asserts that the amount of any monetary damages awarded to Plaintiff should be decided by a jury of Plaintiff’s peers. However, Pursuant to RULE 47 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff seeks monetary relief over Two Hundred and Fifty Thousand Dollars (\$250,000.00) and a demand for judgment for all the other relief to which Plaintiff **RAMON RICHARDS** deems himself justly entitled at the time of filing this suit, which, with the passage of time, may change. Plaintiffs intend that discovery be conducted under LEVEL 3 of RULE 190 of the TEXAS RULES OF CIVIL PROCEDURE.

PARTIES

2. Plaintiff, **RAMON RICHARDS**, is an individual who resides in San Antonio, Bexar County, Texas. Pursuant to Section 30.14 of the Texas Civil Practice & Remedies Code, Plaintiff provides the following information: the last three (3) numbers of Plaintiff's social security number are: 474.

3. Defendant **GENERAL MILLS SALES INC.** is a Foreign For-Profit Corporation authorized to do business in the State of Texas and may be served with process through its registered agent, NATIONAL REGISTERED AGENTS, INC., 1999 Bryan St., Ste, 900, Dallas, Texas 75201.

Citation is hereby requested.

4. Defendant **H-E-B, LP D/B/A H-E-B, TEXAS CORPORATE 395 STORE** is a domestic limited partnership authorized to do business in the State of Texas and may be served with process through its registered agent, Abel Martinez, 646 South Flores St., San Antonio, Texas 78204.

Citation is hereby requested.

JURISDICTION & VENUE

5. This Court has jurisdiction over the parties because the amount in controversy is within the jurisdictional limits of this Court. Additionally, this Court has jurisdiction over the parties because Defendant is a Texas resident and/or does business in the State of Texas.

6. Venue in Bexar County is proper in this Cause under Section 15.002(a)(1) of the TEXAS CIVIL PRACTICE AND REMEDIES CODE because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

MISNOMER, ALTER-EGO AND ASSUMED NAMES

7. In the event any parties are misnamed or not included herein, it is Plaintiff's contention that such was a "misnomer" and/or such parties are/were "alter egos" of parties named herein. Plaintiff

relies upon Vernon's Texas Revised Civil Statutes Annotated, Art 6133, et seq., and Rule 28 of the TEXAS RULES OF CIVIL PROCEDURE in order to properly identify the corporate Defendants herein.

FACTS

8. Plaintiff was injured by consuming this product in the manner intended and foreseen by the Defendants. The product in question, breakfast cereal, is sold in a sealed plastic bag. The product is designed to be used for human consumption in the manner suggested by the manufacturer, to wit: Ready to Eat. Start by pouring your cereal into a bowl, then add milk and eat your cereal.

9. On August 24, 2022, Plaintiff Ramon Richards was a customer shopping at Defendant HEB's store located at 12777 IH 10 WEST, San Antonio, Texas 78230 where he has purchased a 35 oz. bag of Trix Breakfast Cereal. Plaintiff was injured by using the product in the manner described above and suggested on the packaging. That is, Plaintiff opened the package, poured the breakfast into a bowl of cereal, and proceeded to eat the cereal. As Plaintiff was eating the cereal, he bit into a hard object. Plaintiff felt instant pain in his teeth and jaw and heard a cracking sound in his mouth. Plaintiff spit out from his mouth an object that was discovered to be a metal nail. Pieces of Plaintiff's teeth also came out of his mouth.

10. At no time did Plaintiff Ramon Richards alter the package or contents of the Trix bag of breakfast cereal. The product was under the control and prepared by Defendants prior to Plaintiff consuming the product.

PLAINTIFF'S CLAIMS OF NEGLIGENCE AGAINST DEFENDANTS

11. Plaintiff asserts that the product in question, a 35 oz. bag of Trix Breakfast Cereal, was defective and unsafe for its intended purpose at the time it left the control of Defendant GENERAL

MILLS and at the time it was sold by the retailer Defendant H-E-B. Plaintiff further asserts that the product was defective in that it was improperly processed, manufactured, and sold with a dangerous foreign object, a metal nail, in the packaged cereal.

12. Thus, as a proximate result of Defendants' negligent conduct, Plaintiff sustained injuries resulting in injuries and damages to Plaintiff as hereinafter set out. Plaintiff asserts, therefore, that the incident was proximately caused by the negligence of Defendant H-E-B and Defendant GENERAL MILLS, and that said negligence was the proximate cause of the Plaintiff's bodily injuries and damages.

13. Defendants breached the duty of care they owed to Plaintiff as a consumer and were both negligent and grossly negligent in their failure to exercise ordinary care in the safety of Plaintiff. Plaintiff seeks all applicable damages available under Texas law.

14. Due to the negligence of Defendant GENERAL MILLS and Defendant HEB" in packaging, distributing, and selling a product that was unfit for human consumption, Plaintiff Ramon Richards sustained injuries to his body, incurred medical expenses, and is likely to incur additional medical expenses in the future.

STRICT LIABILITY CLAIMS AGAINST DEFENDANTS

15. The Defendants, and each of them, who regularly engage in the business of manufacturing and selling packaged food products, sold a package of food that was adulterated, in that it contained a foreign body that made the food unreasonably dangerous for human consumption. The product that the Defendants manufactures, packaged, sold contained a metal nail at the time it left the Defendants' possession and control. Food that contains metal nails embedded within it is unreasonably dangerous for its ordinary and expected use, i.e., human consumption. Such a product is thus in an unreasonably dangerous condition not contemplated by an ordinary consumer,

making it defective *per se*. The packaged breakfast cereal was used by the Plaintiff in the manner expected and intended when Plaintiff consumed it. The Plaintiff suffered injury and damages as a direct and proximate result of the defective and unreasonably dangerous condition of the product sold by the Defendants. The Defendants are strictly liable to the Plaintiff for all damages proximately caused by their defective product.

**PRODUCT LIABILITY CLAIMS AGAINST DEFENDANT
H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE**

16. On August 24, 2022, Plaintiff bought 35 oz. bag of Trix Breakfast Cereal from Defendant H-E-B.

17. At all times material to this cause of action, Defendant H-E-B was the owner of and/or controlled the subject premises, located at 12777 IH 10 WEST, San Antonio, Texas 78230.

18. At the time of this occurrence, Defendant H-E-B was engaged in the retail business of selling food, including the bag of Trix Breakfast Cereal described above, to the general public.

19. At the time Plaintiff opened the bag of Trix Breakfast Cereal and consumed its contents, the bag was in the same packaging as originally manufactured and as it was at the time it was sold to him by Defendant H-E-B.

**PRODUCT LIABILITY CLAIMS BY MANUFACTURER
DEFENDANT GENERAL MILLS SALES INC.**

20. At the time of this occurrence, Defendant GENERAL MILLS SALES, INC., was engaged in the business of manufacturing and packaging cereals products, including bags of Trix Breakfast Cereal, for sale to and for use by members of the general public. Defendant placed the Trix Breakfast Cereal Bag into the stream of commerce by H-E-B.

21. Defendant GENERAL MILLS was negligent in the processing, manufacturing, marketing and distribution of the bag of Trix Breakfast Cereal in that its product was defective and was

packaged with a dangerous foreign object (a metal nail). Further, Defendant GENERAL MILLS failed to warn the public and Plaintiff of the dangerous foreign object contained within its product.

22. Plaintiff asserts that each and all of the foregoing acts and or omissions were negligent and constituted negligence and were each and all the proximate cause of the incident which forms the basis of this suit and was a proximate cause of Plaintiff's injuries and damages.

BREACH OF EXPRESS WARRANTY

23. Plaintiff further asserts that Defendant GENERAL MILLS and Defendant H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE each expressly warranted that their food product, a 35 oz. bag of Trix Breakfast Cereal, would be fit for human consumption or otherwise would not have a dangerous foreign object (a metal nail) in it. Defendants, and each of them, breached said warranty by selling Plaintiff a 35 oz. bag of Trix Breakfast Cereal with a metal nail in it.

24. As a proximate result of said breach of express warranties by the Defendants, and each of them, Plaintiff was seriously injured, experienced pain and suffering, mental anguish and incurred medical bills.

BREACH OF EXPRESS WARRANTY

25. Plaintiff asserts that Defendant GENERAL MILLS and Defendant H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE each impliedly warranted that their food product, a 35 oz. bag of Trix Breakfast Cereal, would be fit for human consumption or otherwise would not have a dangerous foreign object (a metal nail) in it. Defendants, and each of them, breached said warranty by selling Plaintiff a 35 oz. bag of Trix Breakfast Cereal with a metal nail in it.

26. As a proximate result of said breach of implied warranties by the Defendants, and each of them, Plaintiff was seriously injured, experienced pain and suffering, mental anguish and incurred medical bills.

RES IPSA LOQUITUR

27. Plaintiff cannot more specifically allege the acts of negligent manufacture or design on the part of Defendant GENERAL MILLS, because facts in the regard are peculiarly within the knowledge of the Defendant. In the alternative, in the event Plaintiff is unable to prove specific acts of negligent design or manufacture, Plaintiff relies on the doctrine of *res ipsa loquitur*.

28. In this connection, negligent design or manufacture, Plaintiff will show that the character of the occurrence giving rise to this litigation is such that it would not have in the absence of negligence, and the design and manufacture of the bag of Trix Breakfast Cereal was within the exclusive control of the Defendant GENERAL MILLS at the time of the negligence probably occurred.

29. Plaintiff had no means of ascertaining the method or manner in which the product was designed and manufactured, and it came into Plaintiff's possession in the same condition it was in when it left in the control of the Defendant GENERAL MILLS. Thus, Defendant GENERAL MILLS was negligent in the design and/or manufacture of the Trix Breakfast Cereal bag, and such negligence was a proximate cause of injuries and damages sustained by Plaintiff.

DAMAGES

30. As a direct result of the conduct of Defendants and their agents, servants, and employees, Plaintiff suffered severe injuries to his tooth. These injuries are permanent in nature. The injuries have had a serious effect on Plaintiff's health and well-being. These specific injuries and their ill effects have, in turn, caused Plaintiff's physical and mental condition to deteriorate generally and the specific injuries and ill effects have caused and will, in all reasonable probability, cause Plaintiff to suffer consequences and ill effects of the deterioration of his body for long into the future if not for the balance of his natural life. As a result of the nature and consequences of his injuries, Plaintiff has

suffered great physical and mental pain, suffering and anguish and in all reasonable probability, will continue to suffer in this manner for a long time into the future, if not for the balance of his natural life. By reason of all the above Plaintiff has suffered losses and damages in a sum within the jurisdictional limits of this Court and for which this lawsuit is brought.

31. As a further result of all of the above, Plaintiff has incurred expenses for his medical care and attention. These expenses were incurred for the necessary care and treatment of injuries resulting from the incident complained of. The charges are reasonable and were the usual and customary charges made for the services. As a further result of the injuries sustained by Plaintiff, there is reasonable probability that he will require further medical care and attention and will incur future reasonable and necessary expenses for his medical care and attention.

32. As a proximate cause of the Defendants' negligent conduct and the resulting collision, Plaintiff seeks to recover damages, which specifically include, but are not limited to, the following:

1. Medical expenses in the past;
2. Medical expenses that in all reasonable probability will be incurred in the future, including the cost of medical monitoring and prevention in the future;
3. Physical pain and suffering in the past;
4. Physical pain and suffering that will in all reasonable probability be incurred in the future;
5. Physical impairment, including loss of enjoyment of life, in the past;
6. Physical impairment, including loss of enjoyment of life, which in all reasonable probability, will be suffered in the future;
7. Physical Disfigurement in the past;
8. Physical Disfigurement that in all reasonable probability will be incurred in the future;
9. Mental anguish in the past;
10. Mental anguish that in all reasonable probability will be incurred in the future;
11. Lost wages in the past; and
12. Loss of future wage-earning capacity;

33. By reason of all of the above, Plaintiff **RAMON RICHARDS** has suffered losses and damages in a sum within the jurisdictional limits of this Court for which he now sues.

INTEREST

34. Plaintiff further requests both pre-judgment and post-judgment interest on all damages as allowed by law.

DEMAND FOR JURY TRIAL

35. Plaintiff demands a trial by jury. Plaintiff acknowledges payment on this date of the required jury fee.

REQUEST FOR DISCLOSURE

36. Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, all parties named herein as Defendants are to disclose, within thirty (30) days following the first Answer or general appearance of Defendants, the information and material described in the TEXAS RULES OF CIVIL PROCEDURE 194.2(a)-(l).

NOTICE OF SELF AUTHENTICATION

37. Pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff hereby gives notice to all parties that they intend to use all documents, materials and other discovery instruments produced in this case at trial. Such discovery instruments include, but are not limited to, all documents and materials which Defendant produces in response to Plaintiff's written discovery requests.

DESIGNATED E-SERVICE EMAIL ADDRESS

38. The following is the undersigned attorney's designated E-Service email address for all e-served documents and notices, filed and unfiled, pursuant to Tex. R. Civ. P. 21(f)(2) & 21a: mark.acuna@martinez-law.com; claudia.acuna@martinez-law.com; frances.gonzales@martinez-law.com

[law.com](#). This is the undersigned's only E-Service email address, and service through any other email address will be considered invalid.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, **RAMON RICHARDS**, respectfully prays that Defendants **H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 025 STORE AND GENERAL MILLS SALES, INC.**, be cited to appear and answer herein, and that Plaintiff be awarded a judgment against Defendants for the following:

- a. Actual and compensatory damages;
- b. Pre and post judgment interest at the maximum rate allowable by law;
- c. Any and all applicable costs of court; and
- d. Any and all such other and further relief to which Plaintiff may be entitled to, at law or in equity.

RESPECTFULLY SUBMITTED,

By: /s/ Mark Anthony Acuna
Mark Anthony Acuna
Texas Bar No. 24064044
mark.acuna@martinez-law.com
Desi I. Martinez
Texas Bar No. 24053342
desi.martinez@martinez-law.com

MARTINEZ & ASSOCIATES, PLLC
2828 Goliad Road, Suite 125
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Fax (210) 359-8255

Attorneys for Plaintiff

Automated Certificate of eService

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Claudia Acuna on behalf of Mark Acuna

Bar No. 24064044

claudia.acuna@martinez-law.com

Envelope ID: 84803022

Filing Code Description: FIRST AMENDED PETITION

Filing Description: WITH REQUESTS FOR INITIAL DISCLOSURES

Status as of 2/26/2024 8:08 AM CST

Associated Case Party: Ramon Richards

Name	BarNumber	Email	TimestampSubmitted	Status
Mark AnthonyAcuna		mark.acuna@martinez-law.com	2/22/2024 2:55:00 PM	SENT
Frances Gonzales		frances.gonzales@martinez-law.com	2/22/2024 2:55:00 PM	SENT
Claudia Acuna		claudia.acuna@martinez-law.com	2/22/2024 2:55:00 PM	SENT

Gloria A. Martinez
Bexar County District Clerk
Accepted By: Garland Carter
Bexar County - 224th District Court

PRIVATE PROCESS

Case Number: 2024CI03830

Ramon Richards VS General Mills Sales, Inc. ET AL
(Note: Attached Document May Contain Additional
Litigants)

IN THE 224TH DISTRICT COURT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: **General Mills Sales, Inc.**
BY SERVING ITS REGISTERED AGENT, NATIONAL REGISTERED AGENTS

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00am on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org" Said **First Amended Original Petition With Requests For Initial Disclosures** was filed on this the **22nd day of February, 2024**.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT on this the **26th day of February, 2024**.

MARK ANTHONY ACUNA
ATTORNEY FOR PLAINTIFF
2828 Goliad RD STE 125
San Antonio TX 78223-3967



Gloria A. Martinez
Bexar County District Clerk
101 W. Nueva, Suite 217

San Antonio, Texas 78205
By: /s/ Rosa Aguilera-Rodriguez
Rosa Aguilera-Rodriguez, Deputy

RAMON RICHARDS VS GENERAL MILLS SALES, INC. ET AL

Case Number: 2024CI03830
224th District Court

Officer's Return

I received this CITATION on the 26 day of February, 2024 at 1212 o'clock P M. and () executed it by delivering a copy of the CITATION with attached **FIRST AMENDED ORIGINAL PETITION WITH REQUESTS FOR INITIAL DISCLOSURES** the date of delivery endorsed on it to the defendant National Registered Agents For General Mills Sales Inc in person on the 28 day of February, 2024 at 1116 o'clock A M.
at 1999 Bryan St. Ste. 900 City Dallas State TX Zip 75201
or () not executed because _____

Fees: _____ Badge/PPS #: _____ Date certification expires: _____

_____ County, Texas

BY: _____

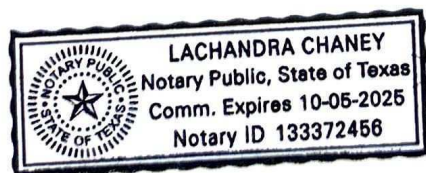
OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS

Narcus Diaz

[Signature]
NOTARY PUBLIC, STATE OF TEXAS

OR: My name is Narcus Diaz, my date of birth is 10/18/67, and my address is 1172 W. Pioneer Pkwy Tarrant County, Arlington, TX 76013

I declare under penalty of perjury that the foregoing is true and correct. Executed in Tarrant County, State of Texas, on the 28 day of February, A.D., 2024



Narcus Diaz
PSC# 13928
Expires 8/31/24

Declarant

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Frances Gonzales on behalf of Mark Acuna
 Bar No. 24064044
 frances.gonzales@martinez-law.com
 Envelope ID: 85096672
 Filing Code Description: Return of Service Successful
 Filing Description: H-E-B, LP
 Status as of 3/4/2024 12:07 PM CST

Associated Case Party: Ramon Richards

Name	BarNumber	Email	TimestampSubmitted	Status
Frances Gonzales		frances.gonzales@martinez-law.com	3/1/2024 11:41:28 AM	SENT
Claudia Acuna		claudia.acuna@martinez-law.com	3/1/2024 11:41:28 AM	SENT
Mark AnthonyAcuna		mark.acuna@martinez-law.com	3/1/2024 11:41:28 AM	SENT

Gloria A. Martinez
Bexar County District Clerk
Accepted By: Garland Carter
Bexar County - 224th District Court

PRIVATE PROCESS

Case Number: 2024CI03830

Ramon Richards VS General Mills Sales, Inc. ET AL
(Note: Attached Document May Contain Additional
Litigants)

IN THE 224TH DISTRICT COURT
BEXAR COUNTY, TEXAS

CITATION

"THE STATE OF TEXAS"

Directed To: **H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 395 STORE
BY SERVING ITS REGISTERED AGENT, ABEL MARTINEZ**

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00am on the Monday next following the expiration of twenty days after you were served this CITATION and PETITION a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org" Said **First Amended Original Petition With Requests For Initial Disclosures** was filed on this the **22nd day of February, 2024**.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT on this the **26th day of February, 2024**.

MARK ANTHONY ACUNA
ATTORNEY FOR PLAINTIFF
2828 Goliad RD STE 125
San Antonio TX 78223-3967



Gloria A. Martinez
Bexar County District Clerk
101 W. Nueva, Suite 217

San Antonio, Texas 78205
By: /s/ Rosa Aguilera-Rodriguez
Rosa Aguilera-Rodriguez, Deputy

RAMON RICHARDS VS GENERAL MILLS SALES, INC. ET AL

Case Number: 2024CI03830
224th District Court

Officer's Return

I received this CITATION on the 26 day of February, 2024 at 1:00 o'clock P.M. and (X) executed it by delivering a copy of the CITATION with attached **FIRST AMENDED ORIGINAL PETITION WITH REQUESTS FOR INITIAL DISCLOSURES** the date of delivery endorsed on it to the defendant H-E-B, LP D/B/A H-E-B TEXAS CORPORATE 395 STORE through its representative Sarah Luna person on the 27 day of February, 2024 at 10:23 o'clock A.M.

at 646 S. Flores St City San Antonio State TX Zip 78204

or () not executed because _____

Fees: _____ Badge/PPS #: 110578 Date certification expires 04/30/2025

Travis County, Texas
BY: Christian Amador Gonzalez

OR: VERIFICATION OF RETURN (If not served by a peace officer) SWORN TO THIS _____

NOTARY PUBLIC, STATE OF TEXAS

OR: My name is Christian Amador Gonzalez, my date of birth is 01/30/1988, and my address is P.O. Box 12681 Austin TX 78711 Travis County.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Bexar County, State of Texas, on the 27 day of February, A.D., 2023.

Christian Amador Gonzalez
Declarant

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Frances Gonzales on behalf of Mark Acuna

Bar No. 24064044

frances.gonzales@martinez-law.com

Envelope ID: 85096672

Filing Code Description: Return of Service Successful

Filing Description: H-E-B, LP

Status as of 3/4/2024 12:07 PM CST

Associated Case Party: Ramon Richards

Name	BarNumber	Email	TimestampSubmitted	Status
Mark AnthonyAcuna		mark.acuna@martinez-law.com	3/1/2024 11:41:28 AM	SENT
Frances Gonzales		frances.gonzales@martinez-law.com	3/1/2024 11:41:28 AM	SENT
Claudia Acuna		claudia.acuna@martinez-law.com	3/1/2024 11:41:28 AM	SENT

CAUSE NO. 2024-CI-03830

RAMON RICHARDS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
vs.	§	224 TH JUDICIAL DISTRICT
	§	
GENERAL MILLS SALES, INC., AND	§	
H-E-B, LP D/B/A H-E-B TEXAS	§	
CORPORATE 395 STORE	§	
Defendants.	§	BEXAR COUNTY, TEXAS

DEFENDANT’S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES H-E-B, LP, a Defendant in the above-entitled cause, and files this its Original Answer, and in support thereof would respectfully show the Court as follows:

I. GENERAL DENIAL

1. Defendant denies each and every allegation of *Plaintiff’s First Amended Original Petition With Requests for Initial Disclosures*, and demands strict proof thereof as required by the Texas Rules of Civil Procedure.

II. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff recovers nothing of and from Defendant and that Defendant receives all costs of Court, attorney’s fees, and such other and further relief, both at law and in equity, to which Defendant may show itself to be justly entitled.

Respectfully submitted,

By: *Ronald E. Mendoza*

RONALD E. MENDOZA

Texas Bar No. 13937700

RICARDO G. CEDILLO

Texas Bar No. 04043600

JOSEPH L. KORBEL

Texas Bar No. 24127174

DAVIS, CEDILLO & MENDOZA, INC.

755 E. Mulberry Ave., Ste. 250

San Antonio, Texas 78212

Telephone: 210.822.6666

Facsimile: 210.660.3795

Email: rcedillo@lawdcm.com

Email: jkorbel@lawdcm.com

ATTORNEYS FOR DEFENDANT

H-E-B, LP

CERTIFICATE OF SERVICE

I certify that on the 25th day of March, 2024, a true and correct copy of the foregoing has been forwarded to the following counsel of record in compliance with the Texas Rules of Civil Procedure:

Mark Anthony Acuna

Desi I. Martinez

mark.acuna@martinez-law.com

desi.martinez@martinez-law.com

claudia.acuna@martinez-law.com

frances.gonzales@martinez-law.com

MARTINEZ & ASSOCIATES, PLLC

2828 Goliad Road, Suite 125

San Antonio, Texas 78223

Attorneys for Plaintiff

Ronald E. Mendoza

RONALD E. MENDOZA

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Elizabeth Keefe on behalf of Ronald Mendoza
 Bar No. 13937700
 ekeefe@lawdcm.com
 Envelope ID: 85900783
 Filing Code Description: ORIGINAL ANSWER OF
 Filing Description: H-E-B, LP
 Status as of 3/27/2024 8:38 AM CST

Associated Case Party: Ramon Richards

Name	BarNumber	Email	TimestampSubmitted	Status
Mark AnthonyAcuna		mark.acuna@martinez-law.com	3/25/2024 9:10:09 AM	SENT
Frances Gonzales		frances.gonzales@martinez-law.com	3/25/2024 9:10:09 AM	SENT
Claudia Acuna		claudia.acuna@martinez-law.com	3/25/2024 9:10:09 AM	SENT

Associated Case Party: H-E-B, LP.

Name	BarNumber	Email	TimestampSubmitted	Status
Ronald E.Mendoza		rmendoza@lawdcm.com	3/25/2024 9:10:09 AM	SENT
Joseph Korbel		jkorbel@lawdcm.com	3/25/2024 9:10:09 AM	SENT
Ricardo G.Cedillo		rcedillo@lawdcm.com	3/25/2024 9:10:09 AM	SENT
Liz Keefe		ekeefe@lawdcm.com	3/25/2024 9:10:09 AM	SENT
Debra Arriola		darriola@lawdcm.com	3/25/2024 9:10:09 AM	SENT

EXHIBIT D

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ramon Richards

(b) County of Residence of First Listed Plaintiff **Bexar County**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mark Anthony Acuna, Desi I. Martinez, Martinez & Associates, PLLC, 2828 Goliad Rd., Ste. 125, SA, TX 782223: (210)359-8250

DEFENDANTS

General Mills Sales, Inc., and H-E-B, LP d/b/a H-E-B Texas Corporate 395 Store

County of Residence of First Listed Defendant **Hennepin County**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Counsel for General Mills, Inc.: Bertina B. York, Norton Rose Fulbright US LLP, 111 W. Houston St., Ste. 1800, SA, TX 78205: (210) 270-7146 and Charmaine Harris. Norton Rose

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Sections 1332, 1441, and 1446Brief description of cause:
Product liability action.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

Mar 27, 2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ Bertina B. York

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Attorneys for Defendants (Continued):

Counsel for General Mills, Inc.: Bertina B. York, Norton Rose Fulbright US LLP, 111 W. Houston St., Ste. 1800, SA, TX 78205; (210) 270-7146 and Charmaine Harris, Norton Rose Fulbright US LLP, 60 South Sixth Street, Ste. 3100, Minneapolis, MN 55402; (612) 321-2800.

Counsel for H-E-B, LP: Ronald E. Mendoza, Davis, Cedillo & Mendoza, Inc., 755 E. Mulberry Ave., Ste. 250, SA, TX 78212; (210)822-6666.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
San Antonio DIVISION

Supplement to JS 44 Civil Cover Sheet
Cases Removed from State District Court

This form must be filed with the Clerk's Office no later than the **first business day** following the filing of the Notice of Removal. Additional sheets may be used as necessary.

The attorney of record for the removing party **MUST** sign this form.

STATE COURT INFORMATION:

1. Please identify the court from which the case is being removed; the case number; and the complete style of the case.

Ramon Richards v. General Mills Sales, Inc., and H-E-B, LP d/b/a H-E-B Texas Corporate 395 Store; Cause No. 2024CI03830 in the 224th District Court, Bexar County, Texas.

2. Was jury demand made in State Court? ☒ Yes ☐ No

If yes, by which party and on what date?

Ramon Richards 2/20/2024
Party Name Date

STATE COURT INFORMATION:

1. List all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

Plaintiff, Ramon Richards
Defendant, General Mills Sales, Inc.
Defendant, H-E-B, LP d/b/a H-E-B Texas Corporate 395 Store

See additional comments section on p. 3 for complete list of attorneys of record for each party.

2. List all parties that have not been served at the time of the removal, and the reason(s) for non-service.

None.

3. List all parties that have been non-suited, dismissed, or terminated, and the reason(s) for their removal from the case.

None.

COUNTERCLAIMS, CROSS-CLAIMS, and/or THIRD-PARTY CLAIMS:

1. List separately each counterclaim, cross-claim, or third-party claim still remaining in the case and designate the nature of each such claim. For each counterclaim, cross-claim, or third-party claim, include all plaintiffs, defendants, and intervenors still remaining in the case. Also, please list the attorney(s) of record for each party named and include the attorney's firm name, correct mailing address, telephone number, and fax number (including area codes).

None.

VERIFICATION:



Bertina B. York

Attorney for Removing Party

03/28/2024

Date

Defendant, General Mills Sales, Inc.

Party/Parties

(NOTE: Additional comment space is available on page 3)

ADDITIONAL COMMENTS (As necessary):

Attorneys for Plaintiff, Ramon Richards:

Mark Anthony Acuna

Texas Bar No. 24064044

Desi I. Martinez

Texas Bar No. 24053342

Martinez & Associates, PLLC

2828 Goliad Road, Suite 125

San Antonio, Texas 78223

Tel. (210) 359-8250

Fax (210) 359-8255

Email: mark.acuna@martinez-law.com

Email: desi.martinez@martinez-law.com

E-Service Email: claudia.acuna@martinez-law.com

E-Service Email: frances.gonzales@martinez-law.com

Attorneys for Defendant, H-E-B, LP d/b/a H-E-B Texas Corporate 395 Store:

Ronald E. Mendoza

Texas Bar No. 13937700

Ricardo G. Cedillo

Texas Bar No. 04043600

Joseph L. Korbel

Texas Bar No. 24127174

Davis, Cedillo & Mendoza, Inc.

755 E. Mulberry Ave., Ste. 250

San Antonio, Texas 78212

Tel. (210) 822-6666

Fax (210) 660-3795

Email: rcedillo@lawdcm.com

Email: jkorbel@lawdcm.com

Attorneys for Defendant, General Mills Sales, Inc.:

Bertina B. York (TX #03354500)

Norton Rose Fulbright US LLP

111 W. Houston Street, Suite 1800

San Antonio, TX 78205

Tel. (210) 270-7146

Fax (210) 270-7205

Email: bertina.york@nortonrosefulbright.com

EXHIBIT E

224th District Court**Case Summary****Case No. 2024CI03830****Ramon Richards VS General Mills Sales, Inc. ET AL****§**Location: **224th District Court****§**Judicial Officer: **224th, District Court****§**Filed on: **02/20/2024**

Case Information

Case Type: **OTHER PRODUCT LIABILITY**Case Status: **02/20/2024 Pending**

Assignment Information

Current Case Assignment

Case Number 2024CI03830

Court 224th District Court

Date Assigned 02/20/2024

Judicial Officer 224th, District Court

Party Information

Lead Attorneys

Plaintiff **Richards, Ramon** **ACUNA, MARK ANTHONY**
Retained

Defendant **General Mills Sales, Inc.**

H-E-B, LP

H-E-B, LP.

MENDOZA, RONALD EDWIN
Retained

Events and Orders of the Court

02/20/2024 New Cases Filed (OCA)

02/20/2024 PETITION

02/22/2024 FIRST AMENDED PETITION
 WITH REQUESTS FOR INITIAL DISCLOSURES

02/26/2024 **Citation**
 General Mills Sales, Inc.
 Served: 02/28/2024
 H-E-B, LP
 Served: 02/27/2024

03/01/2024 RETURN OF SERVICE - SUCCESSFUL
 H-E-B, LP

03/01/2024 RETURN OF SERVICE - SUCCESSFUL
 GENERAL MILLS SALES, INC

03/25/2024 ORIGINAL ANSWER OF
 H-E-B, LP